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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
February 11, 2008

TO: Chairman and Members of Peninsula Community Council

SUBMITTED BY:  _____
for Andrew Faulkner - Development Officer

DATE: February 4, 2008

SUBJECT: Appeal of the Development Officer's decision to refuse a variance - 6130 Allan St., Halifax

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the right side yard requirement, the lot frontage requirement, and the lot area requirement of the Halifax Peninsula Land Use Bylaw to legalize an existing four unit dwelling.

RECOMMENDATION

It is recommended that Council uphold the Development Officer's decision to deny the variance.

BACKGROUND

The subject property is currently zoned R-2 (General Residential) under the Halifax Peninsula Land Use By-law and is located within the Peninsula North Area 1 Secondary Plan Area. The zone and the secondary plan designation require a three (3) and four (4) unit dwelling to provide side yard setbacks of six (6) feet, as well as a minimum lot frontage of eighty (80) feet and a minimum lot area of 8 000 square feet.

The appellant made an application on September 13, 2007 for a Residential Occupancy Permit (#87485) to legalize the existing four (4) unit dwelling. The application was denied based on insufficient lot frontage, insufficient lot area, and insufficient right side yard setback for a four (4) unit dwelling. The matter was forwarded to Bylaw Compliance.

In response to a notice to comply from Bylaw Compliance, the applicant applied for a Variance (#13264) on November 9, 2007 to reduce the lot frontage, lot area, and right side yard setback required in the zone for a four (4) unit dwelling. The structure is one (1) foot from the right property line and is located on a lot with sixty (60) feet of frontage and 5 340 square feet of area. In order to legalize the existing four (4) unit dwelling, a variance is required for the right side yard, as well as for the lot frontage and area. A review of the permit history and assessment records revealed that the legal authorized use of the property is a two (2) unit dwelling.

DISCUSSION

The *Municipal Government Act* sets out guidelines under which the Development Officer may consider variances to Land Use Bylaw requirements. Those guidelines are as follows:

"A variance may not be granted where the:

- (a) variance violates the intent of the land use bylaw;*
- (b) difficulty experienced is general to the properties in the area;*
- (c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw."*

In order to be approved, the proposed variance must not conflict with any of the above statutory guidelines. An assessment of the proposal relative to these stipulations is set out below.

Does the proposed variance violate the intent of the land use bylaw?

The variance violates the intention of the land use bylaw. Section 2.4 of the Halifax Municipal Planning Strategy states.....*in order to promote neighbourhood stability and to ensure different types of residential areas and a variety of choices for its citizens, the City encourages the retention of the existing residential character of predominantly stable neighbourhoods, and will seek to ensure that any change it can control will be compatible with these neighbourhoods.* The immediate neighbourhood (properties within 100 feet of the subject property) is comprised of mostly single unit dwellings and two (2) unit dwellings on lots smaller than the subject property. To allow for an increase from the permitted two (2) dwelling units to the requested four (4) dwelling units on a lot that does not meet the requirements of the zone would not retain the existing residential character of the neighbourhood. Therefore the variance was refused.

Is the difficulty experienced general to the properties in the area ?

The difficulty experienced is general to the area. The immediate neighbourhood has lot area and frontages that are either equal to or smaller than the property in question, with a majority of these being single or two unit dwellings. Therefore the variance was refused.

Is the difficulty the result of intentional disregard for the requirements of the land use bylaw?

The difficulty experienced results from an intentional disregard for the requirements of the land use bylaw. The two unit dwelling was converted to a four unit dwelling without benefit of a construction permit, which demonstrates intentional disregard for the requirements of the land use by-law. Therefore the variance was refused.

BUDGET IMPLICATIONS

None.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

1. Council could uphold the decision of the Development Officer to refuse the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and grant the variance.

ATTACHMENTS

1. Location Map
2. Refusal Letter
3. Appeal Letter

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Andrew Faulkner - Development Officer (490-4402)

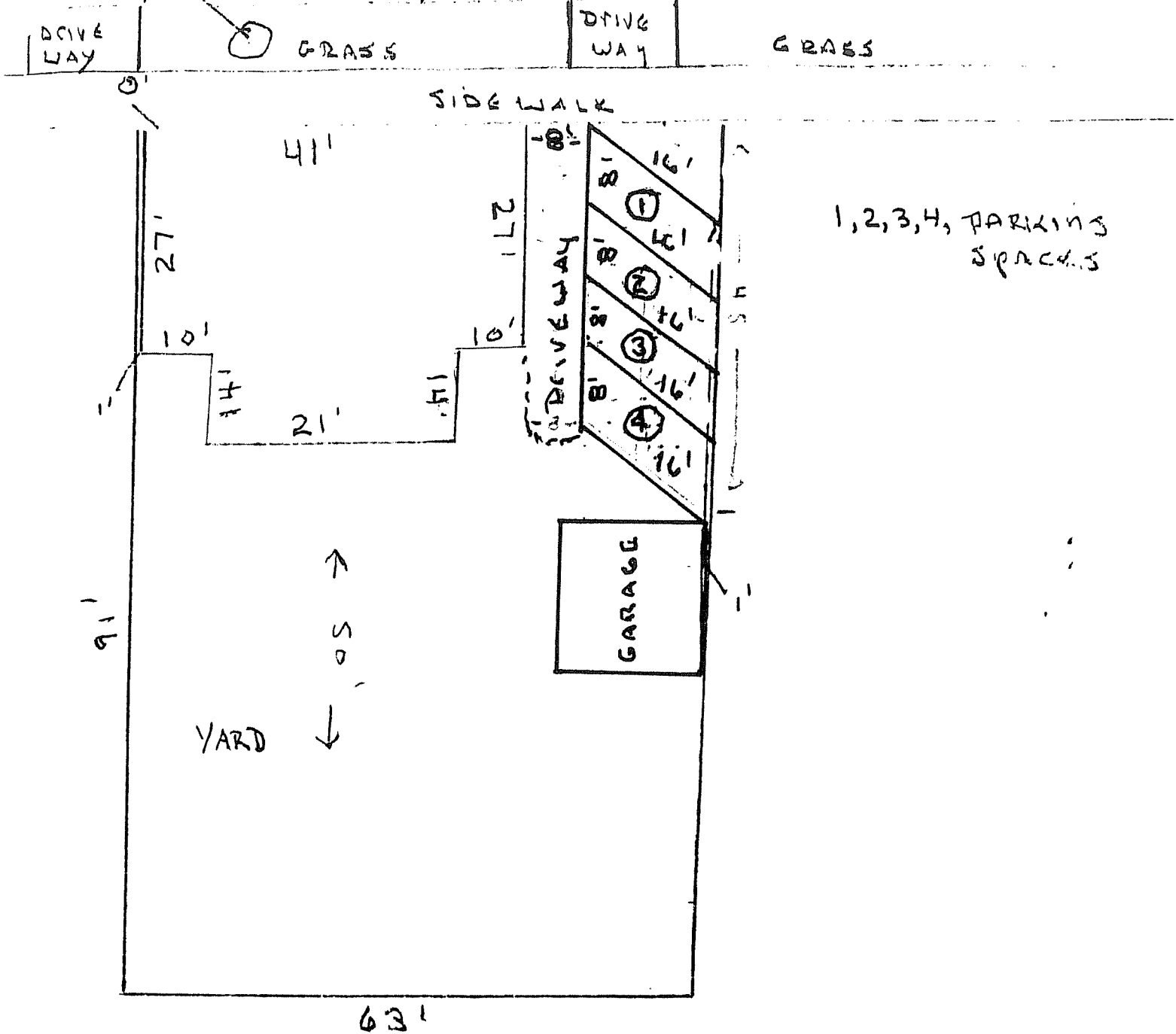
ATTACHMENT 1

6130 Allan Street, Halifax



This map was prepared for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. For further information on Street Name or Community (GSA) data please contact HRM Civic Addressing at 490-5347 or email civicadd@halifax.ca. Date of map is not indicative of the date of data creation.

ALLAN ST. 6130



1, 2, 3, 4, PARKING SPACES



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

ATTACHMENT 2

December 13, 2007

COPY

Gary Warnica
1867 Seldon St.
Halifax, NS
B3H 3X3

Dear Mr. Warnica:

Re: Case No. 13264 - Variance at 6130 Allan St., Halifax, NS

This letter is to advise that the Development Officer for the Halifax Regional Municipality has refused your request for variance from the requirements of the *Halifax Peninsula Land Use Bylaw* as follows:

Location:	6130 Allan St., Halifax, NS	
Property Owner:	Gary Warnica	
Project Proposal:	Legalize Four Unit Dwelling	
Variance Requested:	Right Yard Setback	1 foot (6 feet required)
Variance Requested:	Lot Frontage	60 feet (80 feet required)
Variance Requested:	Lot Area	5 340 square feet (8000 Square feet required)

Section 235(3) of the Municipal Government Act states that

No variance shall be granted where:

- (a) the variance violates the intent of the Land Use Bylaw;**
- (b) the difficulty experienced is general to properties in the area; or**
- (c) the difficulty experienced results from the intentional disregard for the requirements of the Land Use Bylaw.**

It is the opinion of the Development Officer that this variance application does not merit approval because:

- (a) the variance violates the intent of the Land Use bylaw; and
- (b) the difficulty experienced is general to properties in the area, and
- (c) the difficulty experienced results from the intentional disregard for the requirements of the Land Use Bylaw.

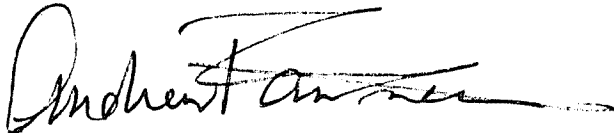
Pursuant to Section 236 (+) of the of the Municipal Government Act you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

**Municipal Clerk
c/o Andrew Faulkner, Development Officer
Halifax Regional Municipality
Development Services- Western Region
P.O. Box 1749
Halifax, NS
B3J 3A5**

Your appeal must be filed on or before December 24, 2007.

If you have any questions or require additional information, please contact Miles Agar, Development Technician, at (902) 490- 7455.

Sincerely,



Andrew Faulkner, Development Officer
Halifax Regional Municipality


cc. Julia Horncastle, Acting Municipal Clerk
Councillor Sheila Fougere

Jan 3/08

ATTACHMENT 3

Dear Mr. Asor-

I would like to appeal
for a variance on 6130 Allen
St. to be legalized to a four
unit building from 2 units.

Thank you


Cary W. Dennis